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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**RECEIVED**

AUG 28 2008 *lcw*  
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MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

United States of America ex rel.

**MELVIN CLIFTON, PRO SE #N-80624**

(Full name and prison number)  
(Include name under which convicted)

PETITIONER

vs.

**KEN BARTLEY, WARDEN, TAKHS  
SUPERMAX PRISON**

(Warden, Superintendent, or authorized  
person having custody of petitioner)

RESPONDENT, and

(Fill in the following blank only if judgment  
attacked imposes a sentence to commence  
in the future)

ATTORNEY GENERAL OF THE STATE OF

(State where judgment entered)

*08cv4928*

**08cv4928  
JUDGE DER-YEGHIAYAN  
MAGISTRATE JUDGE MASON**

Case Number of State Court Conviction:

*96 CR 12716*

**PETITION FOR WRIT OF HABEAS CORPUS - PERSON IN STATE CUSTODY**

- Name and location of court where conviction entered: CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS, 2600 S. CALIFORNIA AVENUE, CHICAGO, ILLINOIS 60608
- Date of judgment of conviction: MAY 17th, 1998
- Offense(s) of which petitioner was convicted (list all counts with indictment numbers, if known)  
FIRST DEGREE MURDER + ATTEMPT MURDER - 96 CR 12716
- Sentence(s) imposed: 55 YEARS MURDER + 25 YEARS ATT. MURDER - CONSECUTIVE
- What was your plea? (Check one)
 

(A) Not guilty	<input checked="" type="checkbox"/>
(B) Guilty	<input type="checkbox"/>
(C) Nolo contendere	<input type="checkbox"/>

If you pleaded guilty to one count or indictment and not guilty to another count or indictment, give details:

**PART I - TRIAL AND DIRECT REVIEW**

1. Kind of trial: (Check one): Jury ☒ Judge only ( )
2. Did you testify at trial? YES ( ) NO ☒
3. Did you appeal from the conviction or the sentence imposed? YES ☒ NO ( )

(A) If you appealed, give the

- (1) Name of court: ILL. APP. COURT, 1ST DIST., 2ND DIV.
- (2) Result: AFFIRMED CONVICTION, SENTENCE RAN CONCURRENT
- (3) Date of ruling: SEPTEMBER 29TH, 2000
- (4) Issues raised: I. INEFFECTIVE ASSISTANCE OF COUNSEL - SPEEDY TRIAL  
II - DISCOVERY VIOLATION AND PREJUDICIAL GANG AFFILIATION  
III - REASONABLE DOUBT

(B) If you did not appeal, explain briefly why not:

4. Did you appeal, or seek leave to appeal, to the highest state court? YES ☒ NO ( )

(A) If yes, give the

- (1) Result: APPELLATE COURT AFFIRMED - SENTENCE RAN CONSECUTIVE AGAIN
- (2) Date of ruling: SEE ATTACHED
- (3) Issues raised: SEE ATTACHED

(B) If no, why not:

5. Did you petition the United States Supreme Court for a writ of *certiorari*? Yes ( ) No ☒

If yes, give (A) date of petition: \_\_\_\_\_ (B) date *certiorari* was denied: \_\_\_\_\_

**PART II - COLLATERAL PROCEEDINGS**

1. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES (☒) NO ( )

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):

A. Name of court: SEE ATTACHED

B. Date of filing: SEE ATTACHED

C. Issues raised: SEE ATTACHED

D. Did you receive an evidentiary hearing on your petition? YES (☒) NO ( )

E. What was the court's ruling? DENIED

F. Date of court's ruling: JUNE 30TH, 2004

G. Did you appeal from the ruling on your petition? YES (☒) NO ( )

H. (a) If yes, (1) what was the result? AFFIRMED

(2) date of decision: JUNE 30TH, 2006

(b) If no, explain briefly why not: \_\_\_\_\_

- I. Did you appeal, or seek leave to appeal this decision to the highest state court?

YES (☒) NO ( )

(a) If yes, (1) what was the result? DENIED

(2) date of decision: NOVEMBER 29TH, 2006

(b) If no, explain briefly why not: \_\_\_\_\_

2. With respect to this conviction or sentence, have you filed a petition in a state court using any other form of post-conviction procedure, such as *coram nobis* or habeas corpus? YES (X) NO ( )

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

1. Nature of proceeding SUCCESSIVE POST-CONVICTION
2. Date petition filed \_\_\_\_\_
3. Ruling on the petition PENDING
4. Date of ruling \_\_\_\_\_
5. If you appealed, what was the ruling on appeal? \_\_\_\_\_
6. Date of ruling on appeal \_\_\_\_\_
7. If there was a further appeal, what was the ruling? \_\_\_\_\_
8. Date of ruling on appeal \_\_\_\_\_

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in federal court? YES ( ) NO (X)

A. If yes, give name of court, case title and case number: \_\_\_\_\_

B. Did the court rule on your petition? If so, state

(1) Ruling: \_\_\_\_\_

(2) Date: \_\_\_\_\_

4. With respect to this conviction or sentence, are there legal proceedings pending in any court, other than this petition? YES (X) NO ( )

If yes, explain: SUCCESSIVE PETITION FOR POST-CONVICTION

RELIEF

**PART III - PETITIONER'S CLAIMS**

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

**BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.**

(A) Ground one SEE ATTACHED  
Supporting facts (tell your story briefly without citing cases or law):

(B) Ground two SEE ATTACHED  
Supporting facts:

(C) Ground three SEE ATTACHED  
Supporting facts:

(D) Ground four SEE ATTACHED  
Supporting facts:

2. Have all grounds raised in this petition been presented to the highest court having jurisdiction?

YES ( ) NO ☒

3. If you answered "NO" to question (2), state briefly what grounds were not so presented and why not:

SUCCESSIVE POST-CONVICTION PETITION - ALL GROUNDS  
ALLEGED THEREIN, STILL PENDING

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA EX. REL.

MELVIN CLIFTON, PRO SE,

REG. NO. N-80624

PETITIONER,

-VS-

KEN BARTLEY, WARDEN;

TAMMS SUPERMAX PRISON

CASE NUMBER

CASE NUMBER OF  
STATE COURT CONVICTION

96 CR 12716

LIMITED STATEMENT OF FACTS AND CHRONOLOGICAL  
ORDER OF CASE PURSUANT TO THE MODEL HABEAS FORM

THE PETITIONER, MELVIN CLIFTON, PRO SE,  
AND CO-DEFENDANT VINCENT GALLOWAY WERE  
FOUND GUILTY OF FIRST DEGREE MURDER AND  
ATTEMPT FIRST DEGREE MURDER ON MAY 17TH, 1998.  
MR. CLIFTON WAS SENTENCED TO 55 YEARS FOR  
THE MURDER AND A CONSECUTIVE 25 YEARS SENTENCE  
FOR ATTEMPT MURDER. PETITIONER WAS REPRESENTED  
AT PRELIMINARY HEARING, AT ARRAIGNMENT AND PLEA,  
AT TRIAL AND AT SENTENCING BY CHARLES G.  
MURPHY, ATTORNEY AT LAW - SUITE 1675, 407 SOUTH  
DEARBORN STREET, CHICAGO, ILLINOIS 60605.

MELVIN CLIFTON FILED A TIMELY NOTICE OF APPEAL AND BEING FOUND INDIGENT WAS APPOINTED COUNSEL : MICHAEL J. PELLETIER, DEPUTY DEFENDER, BY: DONNA FINCH, ASSISTANT APPELLATE DEFENDER, OF COUNSEL TWO FIRST NATIONAL PLAZA - SUITE 2210, 20 SOUTH CLARK STREET, CHICAGO, ILLINOIS 60603. ON PETITIONER'S DIRECT APPEAL HE RAISED THE FOLLOWING ISSUES :

I. - MELVIN CLIFTON WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS TRIAL ATTORNEY FAILED TO MOVE FOR THE DISMISSAL OF THE CHARGES AGAINST HIM FOR WANT OF A SPEEDY TRIAL.

II - THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED THE STATE TO ADD PHILLANDER JENKINS TO ITS LIST OF WITNESSES ON THE DAY THE CASE WAS SET FOR TRIAL THUS ALLOW THE STATE TO CIRCUMVENT THE RULES OF DISCOVERY, MANIPULATE MR. CLIFTON'S RIGHT TO A SPEEDY TRIAL, AND INTRODUCE HIGHLY PRE-JUDICIAL, BUT IRRELEVANT TESTIMONY OF GANG AFFILIATION.



### III. MELVIN CLIFTON'S CONVICTIONS FOR MURDER AND ATTEMPT MURDER MUST BE REVERSED AS THE STATE'S EVIDENCE FAILED TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT

ON APRIL 24TH, 2001, THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT, SECOND DIVISION, IN PEOPLE V. CLIFTON AND GALLOWAY, 1-98-2126 + 1-98-2384 AFFIRMED PETITIONER'S CONVICTIONS, BUT IN LIGHT OF APPENDI V. NEW JERSEY, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000) ORDERED MR. CLIFTON'S CONSECUTIVE SENTENCES TO RUN CONCURRENTLY.

ON AUGUST 4TH, 2003, THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT, FIRST DIVISION IN PEOPLE V. CLIFTON AND GALLOWAY, 1-98-2126 + 1-98-2384, ISSUED A MODIFIED OPINION PURSUANT TO SUPERVISORY ORDER OF THE ILLINOIS SUPREME COURT AND IN LIGHT OF ILL. S. Ct. RECENT RULINGS IN PEOPLE V. WAGENER, 196 Ill.2d 269 (2001) AND PEOPLE V. CARNEY, 196 Ill.2d 518 (2001) REVERSED IT'S RULING ABOVE AND ORDERED MR. CLIFTON'S SENTENCES TO BE SERVED CONSECUTIVELY, ONCE AGAIN.

MR. CLIFTON FILED A TIMELY PETITION FOR LEAVE TO APPEAL IN MAY OF 2001 AND WAS AGAIN REPRESENTED BY DONNA FINCH. SHE RAISED THE FOLLOWING ISSUES FOR REVIEW:

I. REVIEW SHOULD BE GRANTED IN THIS CASE BECAUSE THE APPELLATE COURT RULED THAT UNDER THE SPEEDY TRIAL ACT, A DEFENDANT IS CHARGED WITH DELAY CAUSED BY THE UNAVAILABILITY OF THE TRIAL COURT; A DEFENDANT IS CHARGED WITH DELAY WHEN HE OBJECTS TO A STATE MOTION; A DEFENDANT IS CHARGED WITH A DELAY WHEN HE REQUESTS TIME TO RESPOND TO THE STATE'S LATE DISCLOSURE OF A WITNESS, AND WHEN A DELAY IS CAUSED BY A COURT ORDER.

II. REVIEW SHOULD BE GRANTED IN THIS CASE BECAUSE THE APPELLATE COURT OPINION UPHOLD THE USE OF GANG RELATED TESTIMONY FOR THE SOLE PURPOSE OF INFLAMING THE JURY.

III. WHERE THE APPELLATE COURT FOUND THAT MR. CLIFTON'S ACCOUNTABILITY FOR THE INSTANT OFFENSES COULD BE BASED ON GANG MEMBERSHIP, MERE PRESENCE AND FLIGHT, REVIEW SHOULD BE GRANTED IN THIS CASE.

ON MAY 21ST, 2001, PETITIONER MELVIN CLIFTON FILED A PRO SE PETITION FOR POST-CONVICTION RELIEF, SHOWING THAT THE STATE KNOWINGLY USED PERJURED TESTIMONY, (THE TESTIMONY OF PHILANDER JENKINS) IN ORDER TO OBTAIN HIS CONVICTION. INITIALLY, MR. CLIFTON'S TRIAL COUNSEL; CHARLES MURPHY, REPRESENTED PETITIONER ON HIS POST-CONVICTION PETITION.

ON OCTOBER 21ST, 2003, MURPHY WAS GRANTED LEAVE TO WITHDRAW AND THE COURT APPOINTED RITA A. FRY, THE COOK COUNTY PUBLIC DEFENDER OFFICE TO REPRESENT MR. CLIFTON AND/ THROUGH TOMMY BREWER. AFTER AN EVIDENTIARY HEARING, THE HONORABLE MARCUS R. SALOME DISMISSED MELVIN CLIFTON'S PETITION FOR POST-CONVICTION RELIEF ON JUNE 30TH, 2004.

PETITIONER FILED A TIMELY NOTICE OF APPEAL ON JULY 28TH, 2004 AND AN APPEAL WAS TAKEN IN THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT.

PETITIONER, MELVIN CLIFTON, BEING  
FOUND INDIGENT WAS APPOINTED COUNSEL;  
MICHAEL J. PELLETIER, DEPUTY DEFENDER, BY:  
SARAH CURRY, ASSISTANT APPELLATE DEFENDER,  
203 NORTH LA SALLE STREET - 24TH FLOOR,  
CHICAGO, ILLINOIS 60601. (312)-814-5472.  
WHEREBY THE FOLLOWING ISSUE WAS  
RAISED:

THE CIRCUIT ERRED IN DENYING MELVIN  
CLIFTON'S POST-CONVICTION PETITION  
WHERE THE EVIDENCE PRESENTED AT THE  
EVIDENTIARY HEARING ON CLIFTON'S  
PETITION DEMONSTRATED THAT THE TESTIMONY  
OF AN ESTABLISHED LIAR WAS USED TO  
SECURE CLIFTON'S CONVICTION THEREBY  
DENYING CLIFTON OF A FAIR TRIAL...

ON JUNE 30TH, 2006, THE ILLINOIS  
APPELLATE COURT, FIRST JUDICIAL DISTRICT, FIRST  
DIVISION IN PEOPLE V. CLIFTON, No. 1-04-3437,  
AFFIRMED THE TRIAL COURT'S DISMISSAL OF  
PETITIONER'S POST-CONVICTION PETITION.

PETITIONER, MELVIN CLIFTON, PRO SE,  
FILED A TIMELY PETITION FOR LEAVE TO APPEAL  
IN THE ILLINOIS SUPREME COURT RAISING THE  
FOLLOWING ISSUE:

WHETHER THE CIRCUIT COURT AND THE ILLINOIS  
APPELLATE COURT ERRED IN DENYING MELVIN  
CLIFTON'S POST-CONVICTION PETITION WHERE  
THE EVIDENCE PRESENTED AT THE EVIDENTIARY  
HEARING CLEARLY DEMONSTRATING THAT THE  
TESTIMONY OF AN ESTABLISHED LIAR WAS  
USED TO SECURE CLIFTON'S CONVICTION, THUS;  
DENYING CLIFTON A FAIR TRIAL:

ON NOVEMBER 29<sup>TH</sup>, 2006, THE  
ILLINOIS SUPREME COURT IN PEOPLE V. CLIFTON,  
NO. 103121, DENIED PETITIONER LEAVE TO  
APPEAL.

IN AUGUST OF 2007, MELVIN  
CLIFTON FILED A PRO SE SUCCESSION PETITION  
FOR POST-CONVICTION RELIEF CHALLENGING  
CERTAIN STATUTES AND LAWS WHICH DENIED HIM  
DUE PROCESS AS A CHARGING INSTRUMENT.

MR. CLIFTON HAS SURVIVED THE SUMMARY STAGE BY STATING THE "GIST OF A CONSTITUTIONAL CLAIM" AND HAS THEREFORE PROCEEDED TO THE SECOND STAGE OF THE ILLINOIS POST-CONVICTION ACT, I.E. 725 ILCS 5/122.2.1, 5/122-4 THROUGH 6/122-6. MELVIN CLIFTON, BEING FOUND TO BE INDIGENT WAS ALSO APPOINTED COUNSEL; THE COOK COUNTY PUBLIC DEFENDER'S OFFICE TO REPRESENT HIM. THIS SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF IS THEREFORE PRESENTLY PENDING.

PETITIONER, MELVIN CLIFTON PRO SE, NOW FILES THIS HIS FEDERAL WRIT OF HABEAS CORPUS AND PRAYS THAT THIS HONORABLE DISTRICT COURT GRANT HIM ADDITIONAL TIME BY (1)- HOLDING HIS PETITION FOR WRIT OF HABEAS CORPUS IN "ABEYANCE", UNTIL HIS STATE REMEDIES ARE FULLY EXHAUSTED, OR (2)- DISMISS HIS PETITION FOR WRIT OF HABEAS CORPUS "WITHOUT PREJUDICE", AND GRANT HIM LEAVE TO FILE HIS PETITION FOR WRIT OF HABEAS CORPUS, AFTER FULLY EXHAUSTING HIS STATE COURT REMEDIES.



## GROUND FOR RELIEF

### I

PETITIONER, MELVIN CLIFTON STANDS DENIED OF DUE PROCESS, EQUAL PROTECTION AND THE EFFECTIVE ASSISTANCE OF COUNSEL, WHEN HIS TRIAL COUNSEL FAILED TO MOVE FOR THE DISMISSAL OF THE CHARGES AGAINST HIM FOR WANT OF A SPEEDY TRIAL.

### II

PETITIONER, MELVIN CLIFTON STANDS DENIED OF DUE PROCESS, EQUAL PROTECTION AND THE EFFECTIVE ASSISTANCE OF COUNSEL, WHERE THE TRIAL COURT ALLOWED THE STATE TO ADD PHILANDER JENKINS TO ITS' LIST OF WITNESSES ON THE DAY THE CASE WAS SET FOR TRIAL, THUS ALLOWING THE STATE TO CIRCUMVENT THE RULES OF DISCOVERY, MANIPULATE MR. CLIFTON'S RIGHT TO A SPEEDY TRIAL, AND INTRODUCE HIGHLY PREJUDICIAL, BUT IRRELEVANT TESTIMONY OF GANG AFFILIATION.



## GROUND FOR RELIEF

### III

PETITIONER, MELVIN CLIFTON STANDS DENIED OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW, WHERE THE STATE'S EVIDENCE FAILED TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION.

### IV

PETITIONER, MELVIN CLIFTON'S CONSECUTIVE 25 YEARS SENTENCE IS UNCONSTITUTIONAL AS IT VIOLATES THE PROHIBITIONS THE UNITED STATES SUPREME COURT SET FORTH IN APPENDI V. NEW JERSEY, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000)

## GROUND FOR RELIEF

### V

PETITIONER, MELVIN CLIFTON, STANDS DENIED OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW WHEN THE STATE PRESENTED THE PERJURED TESTIMONY OF AN KNOWN ESTABLISHED LIAR TO SECURE HIS CONVICTION

### VI

PETITIONER, MELVIN CLIFTON STANDS DENIED OF DUE PROCESS, EQUAL PROTECTION AND THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE CERTAIN VOID AND UNCONSTITUTIONAL STATUTES AND LAWS OF ILLINOIS WERE UTILIZED AS CHARGING INSTRUMENTS

## CONCLUSION

PETITIONER, MELVIN CLIFTON, PRO SE, PRAYS THAT THIS HONORABLE UNITED STATES DISTRICT COURT GRANT THIS HIS PETITION FOR WRIT OF HABEAS CORPUS. PETITIONER, PROCEEDING PRO SE IS A LAYMAN WITHOUT ANY KNOWLEDGE OF LAW AND SUBMITS THIS PETITION WITH ONE OF HIS CLAIMS THAT HAS NOT BEEN FULLY EXHAUSTED IN THE STATE COURTS. — (SEE GROUND FOR RELIEF VII.) HE DOES SO BECAUSE OF HIS IGNORANCE WHEN LITIGATING IN U.S. FEDERAL COURTS. IN THAT A MAY 16th, 2007 LETTER FROM WILLIAM K. SUTER, CLERK OF THE SUPREME COURT DENIED A PETITION FOR WRIT OF CERTIORARI AS UNTIMELY.

WHEREBY, PETITIONER IN ORDER TO PRESERVE HIS RIGHTS OF HABEAS CORPUS RELIEF, SUBMITS THE INSTANT PETITION FOR WRIT OF HABEAS CORPUS. HE PRAYS THIS HONORABLE COURT: (1) — HOLD SAID PETITION IN "ABEYANCE", UNTIL HIS STATE REMEDIES ARE FULLY EXHAUSTED, OR, (2) DISMISS HIS PETITION FOR WRIT OF HABEAS CORPUS, "WITHOUT PREJUDICE", AND GRANT CLIFTON LEAVE TO FILE SAID WRIT OF HABEAS CORPUS, AFTER FULLY EXHAUSTING STATE COURT REMEDIES. — RESPECTFULLY SUBMITTED.

DE 8-19-08

*M. Melvin Clifton*  
MELVIN CLIFTON N-80624  
8500 SUPERMAX ROAD — TAMMS CC  
TAMMS ILLINOIS 62988

**PART IV - REPRESENTATION**

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing SEE ATTACHED
- (B) At arraignment and plea SEE ATTACHED
- (C) At trial SEE ATTACHED
- (D) At sentencing SEE ATTACHED
- (E) On appeal SEE ATTACHED
- (F) In any post-conviction proceeding SEE ATTACHED
- (G) Other (state): \_\_\_\_\_

**PART V - FUTURE SENTENCE**

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES ( ) NO (X)

Name and location of the court which imposed the sentence: \_\_\_\_\_

Date and length of sentence to be served in the future \_\_\_\_\_

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of attorney (if any)

8-19-08

I declare under penalty of perjury that the foregoing is true and correct.

1. M. M. Clifton  
(Signature of petitioner)

N-80624, TAMMS-MAX C.C.  
(I.D. Number)

8500 SUPERMAX ROAD, TAMMS, IL 62988  
(Address)